

**AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN LUIS OBISPO**

STAFF REPORT

**ADOPTION OF RULE 224
FEDERAL REQUIREMENTS FOR NEW AND MODIFIED MAJOR SOURCES IN NONATTAINMENT
AREAS**

January 27, 2016

I. BACKGROUND

The U.S. EPA is mandated by the Federal Clean Air Act (CAA) to establish National Ambient Air Quality Standards (NAAQS) related to ozone and ensure attainment of those standards. The eastern portion of San Luis Obispo County has been designated as a federal nonattainment area for ozone and is required by the Federal CAA to have a Federal New Source Review regulation for new and modified major sources of ozone forming pollutants in nonattainment areas. The District's California-based new source review rules in our Regulation II, which are not federally enforceable, generally require mitigation at much lower levels and would preclude most projects from reaching emission levels that would trigger proposed Rule 224.

II. DISCUSSION

All nonattainment areas are required to adopt a Federal New Source Review (NSR) regulation for new or modified major emission sources or risk the loss of federal highway funds. The EPA emission threshold defining a major source varies with the severity of the nonattainment classification for each area, with less severe nonattainment areas having less stringent major source thresholds than more severe nonattainment areas. For the eastern portion of our county that is designated as marginal nonattainment, a major source is defined as an operation that has the potential to emit 100 tons per year of either nitrogen oxides (NOx) or volatile organic compounds (VOC), which are ozone forming pollutants; this is the least stringent major source threshold under the Federal Clean Air Act. In contrast, extreme nonattainment areas such as the San Joaquin Valley and Southern California have the most stringent major source thresholds at 10 tons per year.

To put the 100 tons per year major source threshold for our area into perspective, a proposed new or modified project would need to be of the same magnitude as the Phillips 66 refinery in order to trigger the threshold; there are no known projects that would exceed this threshold. The Chevron Oilfield in the southeast portion of the San Joaquin Valley is the only existing facility in our nonattainment area that would qualify as a major source under this NSR rule.

Proposed projects exceeding the 100 ton per year major source potential to emit threshold would not be precluded from locating in the nonattainment area of the eastern county, but they would be required to obtain emission offsets to counterbalance the increase from the proposed project; this ensures that plans to bring the area into attainment with the NAAQS are not compromised. Because the eastern portion of the county has been classified as a marginal ozone nonattainment area, the least severe of the nonattainment classifications, any proposed project that exceeds the

100 ton per year threshold would need to provide offsets at a ratio of 1:1.1. For example, a proposed project that has 100 tons of NOx or VOC emissions would require 110 tons of offsets.

To meet the federal requirements, this rule must be submitted to EPA for inclusion into the State Implementation Plan (SIP) after adoption. Upon inclusion into the SIP, Rule 224 would be federally enforceable as required by the CAA.

III. RULE DISCUSSION

The proposed rule is contained in Appendix A. The following summarizes the new rule provisions.

Rule 224, Federal Requirements for New and Modified Major Sources in Nonattainment Areas

Rule 224, Federal Requirements for New and Modified Major Sources in Nonattainment Areas, is proposed to implement the Federal Clean Air Act which requires that districts with areas designated as nonattainment for ozone have an approved Federal NSR program for new and modified major sources of ozone forming pollutants.

1 APPLICABILITY PROCEDURES

This section specifies the applicability requirements of the rule.

1.1 Preconstruction Review Requirements

This section specifies that the NSR program requires a preconstruction review for any major new source or major modification.

1.2 Authority to Construct Requirement

This section stipulates that no construction can begin without first obtaining an Authority to Construct.

1.3 Emission Calculation Requirements to Determine NSR Applicability

This section outlines the methods for determining if a proposed project or modification will result in being classified as being major emission source.

1.4 Major Sources with Plant-wide Applicability Limitations (PAL)

This section calls for any source with a PAL permit to comply with the PAL requirements of the rule.

1.5 Projects Which Rely on a Projected Actual Emissions Test

This section describes the use of estimated or projected emissions to determine the significance of an increase in emissions from projects at existing major sources.

1.6 Secondary Emissions

This section specifies that this rule applies only to major emission increases and only to the eastern nonattainment area of our County as defined on the date of adoption. It also specifies procedures to determine applicability of the different sections.

2 DEFINITIONS

This section defines key terms in this specific rule consistent with federal terminology.

3 APPLICATION REQUIREMENTS

This section describes what the application for an Authority to Construct must contain at a minimum.

3.1 Application Submittal

This section specifies that any proposed project determined to be a major stationary source or major modification shall obtain an Authority to Construct.

3.2 Application Content

This section lists the pertinent information that an application for an Authority to Construct must contain.

3.3 Lowest Achievable Emission Rate (LAER)

This section describes the requirement for including a LAER analysis for each emission unit in a proposed project that emits the regulated pollutant.

3.4 Statewide Compliance

This section describes the requirement for owners of existing major sources in the state to demonstrate compliance with emission standards under the Clean Air Act.

3.5 Analysis of Alternatives

This section describes the requirement for evaluating alternatives for a proposed project.

3.6 Sources Impacting Class I Areas

This section describes the requirement of conducting an analysis when a proposed major source or major modification impacts a Class I area.

3.7 Application Fees

This section describes the applicability of the District's application fee.

4 EMISSIONS OFFSETS

This sections specifies how offsets (emission reductions to mitigate emission increases) are determined, how much is required, and what restrictions apply.

4.1 Offset Requirements

This section lists the requirements that subject emissions must meet in order to qualify as an emission offset.

4.2 Timing

This section describes the timing sequence surrounding the use of offsets.

4.3 Quantity

This section describes the process of determining the amount of emission reduction credits required to satisfy the offset requirements.

4.4 Emission Reduction Requirements

This section describes the emission reduction credit requirements that must be achieved before they can be used for offsets.

- 4.5 Restrictions on Trading Pollutants
This section describes the limitations of interpollutant offsets.
- 5 ADMINISTRATIVE REQUIREMENTS
This section describes the administrative aspects of the rule.
 - 5.1 Visibility
This section describes the requirement for the APCO to consult with the Federal Land Manager when a proposed major project may impact visibility in a Class I Area.
 - 5.2 Ambient Air Quality Standards
This section describes methods to analyze a major source's potential impact to the National Ambient Air Quality Standards (NAAQS).
 - 5.3 Air Quality Models
This section describes the requirements for air quality models to be used for estimating the impact of a proposed major project or modification.
- 6 PRELIMINARY DECISION
This section describes the requirements of the APCO in the Authority to Construct (ATC) process.
 - 6.1 Preliminary Decision
This section describes the requirement for the APCO to determine compliance with applicable District, state and federal rules and regulations.
 - 6.2 Authority to Construct – Preliminary Decision
This section lists the minimum requirements that must be met before the APCO can issue an ATC.
 - 6.3 Authority to Construct Contents
This section describes the minimum contents of an ATC for a proposed major project or modification.
 - 6.4 Authority to Construct – Final Decision
This section outlines the required actions of the APCO in issuing a final decision to grant an ATC for a proposed major project or modification.
- 7 SOURCE OBLIGATIONS
This section describes the applicant's responsibility for an ATC at a proposed major project or modification.
 - 7.1 Enforcement
This section describes enforcement action when a major project or modification is not completed according to the ATC.
 - 7.2 Termination
This section describes the conditions which would lead to termination of an ATC of a proposed major project or modification.

- 7.3 Compliance
This section describes the responsibility of the owner or operator to comply with any other requirements under local, state or federal law.
- 7.4 Relaxation in Enforceable Limitations
This section describes the applicability of the rule following changes to federally enforceable limits.
- 8 PUBLIC PARTICIPATION
This section describes the APCO requirements for providing the opportunity for public participation.
- 9 PLANT-WIDE APPLICABILITY LIMITS (PAL)
This section describes Plant-wide Applicability Limits.
 - 9.1 Transition Requirements
This section describes the PAL requirement associated with the rule.
- 10 INVALIDATION
This section describes subsequent actions if any provision of the rule is held invalid.

IV. AFFECTED SOURCES

The Chevron Oilfield in the southeast portion of the San Joaquin Valley is the only major source in our nonattainment area.

V. CONSIDERATION OF FINDINGS RELATED TO COST-EFFECTIVENESS OF CONTROL MEASURES

Emission Reductions

The proposed rule is administrative in nature and does not impose a new emission limit or require control measures beyond those required under California law. Therefore, there isn't any emission reductions expected from the proposed rule action.

Cost-Effectiveness and Incremental Cost-Effectiveness

There isn't any cost-effectiveness or incremental cost-effectiveness figures relative to this rulemaking task. The proposed rule is not implementing a control measure or retrofit control requirements. Further, there isn't any emission reductions anticipated. Therefore, the requirements of California Health and Safety Code (H&SC) Section 40703 and Section 40920.6 do not apply.

VI. ENVIRONMENTAL DETERMINATIONS

Under the California Environmental Quality Act (CEQA), if adoption of this rule were somehow determined to be a project, it would be exempt as a Class 8 action by Section 15308 of the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3).

Section 15308. Actions by Regulatory Agencies for Protection of the Environment.

Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.

This action is authorized by the California Health and Safety Code (H&SC) sections 40001 and 40702 that establish the District's authority to adopt regulations. The rule is required by the Federal Clean Air Act for the protection of public health and the environment. This rule does not authorize or require any project or activity. Should any future project be subject to the rule, that project would be subject to CEQA review. Adoption of this rule is not approval of construction activities or a relaxation of standards allowing environmental degradation. The adoption of this rule is exempt from CEQA.

VII. PUBLIC AND AGENCY COMMENTS

A notice was published in the Tribune, the draft rule was sent to the Air Resources Board for their review and a notification was made to our larger emission sources in the nonattainment area: Grimmway Farms and Bolthouse Farms in Cuyuma, and Chevron in the San Joaquin Valley portion of our county. At the time this report was finalized, no comments had been received.

VIII. COMPARISON OF ADJOINING AIR POLLUTION CONTROL DISTRICT RULES

Other air districts that have areas of federal nonattainment for ozone have either adopted or are in the process of adopting similar rules.

IX. RULE ADOPTION FINDINGS

As required in Section 40727 of the California Health and Safety Code (H&SC), the District Board must make findings of necessity, authority, clarity, consistency, non-duplication, and reference.

- A. Necessity: The proposed adoption of Rule 224 is necessary to comply with the Federal Clean Air Act.
- B. Authority: Authority is given to the District to adopt rules pursuant to H&SC Sections 40001 and 40702.
- C. Clarity: The proposed rule has been found by the District to be written in clear English and to be as easily understood as possible.
- D. Consistency: The District has found that the proposed rule is consistent with existing District rules and regulations and with existing state and federal guidelines.
- E. Non-duplication: Adoption of Rule 224 does not impose the same requirements as an existing state or federal law or regulation regarding the attainment and maintenance of federal air quality limits.
- F. Reference: By adoption of the proposed rule, the District is implementing, and making specific, applicable provisions of H&SC Section 40001 *et seq.*

X. CONCLUSION AND RECOMMENDATION

The proposed rule is to implement the requirements of the Federal Clean Air Act for new and modified major stationary sources of ozone forming pollutants in the eastern federal nonattainment portion of San Luis Obispo County. There are currently no known projects that would be affected by this regulation. Staff recommends that the proposed rule be adopted as written.

ATTACHMENTS

Exhibit A: includes the full text of proposed Rule 224.

REFERENCES

1. *40 CFR 51.165, Permit Requirements*

EXHIBIT A

Proposed Rule 224